

The ALJ found claimant was entitled to psychological treatment and authorized Dr. James Eyman to treat claimant's "psychological issues solely stemming from the work accident of July 29, 2013." The ALJ denied the request to authorize Thomas V. Matthews, Ph.D., because he was recommending the same type of treatment claimant has and continues to receive due to psychological issues that preexisted the work accident. The ALJ held respondent should not be responsible for paying for treatment related to psychological issues that predated the work accident. The ALJ expressed concern that Dr. Matthews' treatment could not separate the psychological issues that predated the accident and the psychological issues from the July 2013 work-related accident.

Respondent appeals, arguing the ALJ's Order should be reversed as claimant has failed to meet his burden of proving his psychological conditions and need for treatment arise out of and in the course of his employment. Respondent contends claimant's current condition is an aggravation of his preexisting condition, arguing the ALJ exceeded her authority in authorizing Dr. Eyman to treat claimant when claimant did not request, and respondent did not direct, claimant to Dr. Eyman for authorized treatment. Dr. Eyman's authorization was made without respondent being given an opportunity to present evidence of whether the treatment was appropriate to cure and relieve claimant of the effects of his work-related injury.

Claimant contends the Board lacks jurisdiction over this appeal because the ALJ has the jurisdiction to determine what medical treatment should be provided when an employer fails to promptly provide medical treatment for a compensable injury. Claimant also argues it was acknowledged at the hearing that the claim was compensable and medical treatment is the only issue on appeal. Therefore, claimant argues there is no issue over which the Board has jurisdiction at this time.

The issues on appeal are:

1. Does the Board have jurisdiction over this matter at this time? If so;
2. Did claimant's psychological condition arise out of and in the course of his employment with respondent?
3. Did the ALJ exceed her authority by appointing Dr. Eyman to provide psychiatric treatment?

#### **FINDINGS OF FACT**

Claimant began working for respondent August 9, 2004. On July 28, 2013, claimant's left hand was crushed in a machine he was working on when the machine malfunctioned. Claimant was initially transported to St. Francis Hospital and later to the University of Kansas Medical Center. The initial medical assessment indicated claimant's hand would have to be amputated. However, surgery was performed and claimant's hand, although badly damaged, was saved. Claimant continues to have pain in his hand ranging from a 2 to a 7 or 8 on a scale from 0-10. He does not consider the pain to be debilitating.

Claimant testified he was told when the machine fell on his hand he had 3,000 pounds of pressure on his hand for about a minute. Claimant has a scar on his palm and the back of his hand where the skin was torn and ligaments of the ring finger and little finger were torn.

When claimant returned to work, he was reassigned to another machine. Claimant testified that when he was reassigned, he was moved about 50 feet to the next

department, with a wall in between the departments. He has to walk by the machine that crushed his left hand every time he goes to the bathroom. This affects claimant because it is a constant reminder of the accident. Since the accident, claimant's does not grasp anything and is limited with how much he can lift. He worries about picking up his grandchildren and if he is going to be able to hold them without dropping them.

Claimant indicated that before the accident he had been receiving mental health care from Dr. Matthews for other mental health issues including Post-Traumatic Stress Disorder (PTSD) from an auto accident. This treatment is paid for by his health insurance coverage through Goodyear Group Insurance. Claimant has been receiving mental health care off and on for 15 or 20 years from different doctors, with three and a half of those years being with Dr. Matthews. Claimant admits that he had been suffering from depression and anxiety for most of his life, even when he did not know it and that more than likely his PTSD has been present since his auto accident.

Claimant is requesting authorization for Dr. Matthews to treat him for PTSD symptoms related to the hand crush accident. Claimant testified that the pain and discomfort he has from the accident is a constant reminder of the accident itself. He has flashbacks and nightmares or dreams about his accident. He testified that the flashbacks come on all of a sudden and everything comes flooding back to him. He considers this to be a painful experience. After he comes out of the flashback from remembering the accident, about 15 minutes later, he gets shooting pain in his hand. Dr. Mathews has recommended cranial electro therapy stimulation, which is the same treatment claimant was receiving before the accident with respondent. Claimant was receiving cranial electro therapy stimulation therapy with Dr. Matthews as part of his mental health treatment up until his July 29, 2013, accident.

Claimant admits his PTSD symptoms have diminished, but they are still there and he continues to feel he needs treatment. Claimant testified he is able to function at work. He believes his PTSD was aggravated by the July accident. Claimant would like to continue with cranial electro therapy stimulation therapy with Dr. Matthews.

Claimant indicated he no longer has flashbacks of his auto accident or issues from his childhood, but he believes that is because he has learned to suppress those memories.

On April 15, 2015, claimant met with psychiatrist C. Ray Lake, M.D., Ph.D., for an evaluation at the request of respondent. Claimant reported having a gnawing pain in his left hand. He reported an inability to grasp well with the left hand and he worries about dropping his grandson. Claimant indicated that as long as he did not get any worse, he could live with the pain. He estimated he lost about 60 percent function of his left hand.

Claimant admitted having episodes of depressions two or three times a year since he was 15 years old, and that these episodes would last anywhere from six weeks to three months. Claimant was diagnosed with Manic Depression when he was 20 years old.

Claimant's most recent episode was after the accident in 2013 when he had substantial pain and could not work. Claimant had been prescribed Zoloft by his primary-care physician.

Dr. Lake documented several symptoms of PTSD that were worse in claimant during the two or three months after his accident, but that have now decreased. He indicated claimant reported still having a few disturbing dreams about the accident. He noted claimant walks by the site of the accident every day to go to the bathroom from his current position. Claimant reported feeling discomfort from this, but added that it has gotten better over time. He said he had "an occasional flashback" of the accident, and that they only occur once or twice a month now. Claimant reported that sometimes he would walk up to the machine, but not touch it. Dr. Lake recommended he touch the machine every time he walks by it in order to desensitize himself by in vivo exposure to the site of the accident. Claimant admitted that his symptoms "overall are only minimally life disruptive now" and he is enjoying life and looking forward to retiring in four years with his wife. Dr. Lake also diagnosed claimant with Bipolar Disorder, Type II.

Dr. Lake concluded claimant's mood was normal without significant depression or hypomania, but that it was not out of the question that he would have an episode at some point. He concluded claimant's PTSD symptoms have diminished substantially and are no longer a significant burden. Dr. Lake felt claimant would benefit from further psychotherapy and a change in his medication management. He suggested claimant find a psychiatrist experienced in treating Bipolar Disorder, Type II, and a more focused medication management program, without which claimant's cycling and difficulties would likely continue and possibly get worse. Dr. Lake cautioned that claimant's prescription of Zoloft was actually contraindicated in the treatment of Bipolar Depression. Dr. Lake acknowledged the accident at respondent precipitated a recurrence of claimant's Bipolar Depression and caused symptoms of PTSD, both of which have now mainly resolved.

On October 29, 2015, Dr. Matthews responded to a request to review the IME report of Dr. Lake. Dr. Matthews wrote claimant has been his patient since November 2011. His treatment stopped in December 2013 due to the work injury, but resumed in July 2014. He noted claimant has had 45 sessions of EEG Operant Conditioning to address the cognitive and affective consequences of an earlier head injury.

Claimant was diagnosed with PTSD as a direct result of the hand injury at work and Dr. Mathews noted claimant has not reached MMI for that injury. In fact, he noted claimant has received no authorized treatment for the PTSD to date.

Dr. Matthews wrote that claimant may not recall his discomfort around machines or his flashbacks and pain episodes unless he is asked in a supportive manner and he is very likely to minimize his signs of PTSD inadvertently. Dr. Matthews noted claimant's prior childhood and early adult trauma that produced PTSD issues before the work injury. Dr. Matthews opined that claimant's work injury exacerbated his preexisting mental and

emotional problems, cautioning not all of claimant's work-related injury consequences are captured by a narrow focus solely on the hand injury trauma. It is Dr. Matthews' opinion that claimant can work productively at his current job and work assignment.

Based on his experience treating claimant and repeated and current evaluation of claimant's mental health, it is Dr. Mathews' opinion, to a reasonable degree of psychological certainty, that claimant does suffer PTSD as a direct result of his hand being crushed in the job related injury; claimant has not reached maximum medical improvement; claimant does need treatment and is likely to show improvement due to treatment of his PTSD issues; and these difficulties do impair, but do not preclude claimant working at respondent.

Dr. Matthews recommended treatment to address the consequences of the work injury, including medication, exposure therapy and Cranial Electrotherapy Stimulation, both in office and, when available, with a device to administer at home.

#### **PRINCIPLES OF LAW AND ANALYSIS**

K.S.A. 2013 Supp. 44-501b(b)(c) states:

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 1998 Supp. 44-534a(a)(2) states:

(2) Such preliminary hearing shall be summary in nature and shall be held by an administrative law judge in any county designated by the administrative law judge, and the administrative law judge shall exercise such powers as are provided for the conduct of full hearings on claims under the workers compensation act. Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim, except that if the employee's entitlement to medical compensation or temporary total disability compensation is disputed or there is a dispute as to the compensability of the claim, no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues. A finding with regard to a disputed issue of

whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. If an appeal from a preliminary order is perfected under this section, such appeal shall not stay the payment of medical compensation and temporary total disability compensation from the date of the preliminary award. If temporary total compensation is awarded, such compensation may be ordered paid from the date of filing the application, except that if the administrative law judge finds from the evidence presented that there were one or more periods of temporary total disability prior to such filing date, temporary total compensation may be ordered paid for all periods of temporary total disability prior to such date of filing. The decision in such preliminary hearing shall be rendered within five days of the conclusion of such hearing. Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

The ALJ determined claimant suffers from PTSD as the result of the serious crush accident to claimant's left hand on July 29, 2013. The first issue to be determined is whether the Board can take jurisdiction of that issue on an appeal from a preliminary hearing order. Early in its existence, the Board ruled whether a psychological disorder is the direct result of an accidental injury is a question involving the nature and extent of an injury. Under the 1998 version of K.S.A. 44-534a, the Board ruled it did not have the necessary jurisdiction to decide that issue on appeal from a preliminary hearing order.<sup>1</sup> However, the Board's position on this issue has modified in recent years. In *Farra*<sup>2</sup>, the Board ruled that while the question of whether a worker needs ongoing medical treatment is not jurisdictional, the issue of whether a psychological condition is directly traceable to the work-related accident is a question that goes to the compensability of the condition or injury. Thus, the Board has jurisdiction over that issue on an appeal from a preliminary hearing order.<sup>3</sup>

Here, Dr. Mathews, who had been treating claimant for ongoing psychological problems for years, determined claimant needed ongoing treatment for PTSD, and at least a portion of that problem stemmed from the accident at respondent. Dr. Lake, respondent's expert, diagnosed claimant with PTSD symptoms after the accident and reported those symptoms had decreased, but he did not find the symptoms completely resolved. As noted by Dr. Mathews, claimant has undergone significant medical treatment

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<sup>1</sup> *Eaton v. Coleman Company, Inc.*, No. 205,158, 1998 WL 695373 (Kan. WCAB Sept. 21, 1998).

<sup>2</sup> *Farra v. Mercy Hospital*, No. 1,055,822, 2004 WL 1301715 (Kan. WCAB May 27, 2004).

<sup>3</sup> See also: *Baty v. Woodhaven Care Center*, No. 1,047,549, 2010 WL 1445627 (Kan. WCAB Mar. 31, 2010); *Jordan-Cain v. State of Kansas*, No. 1,058,565, 2012 WL 3279504 (Kan. WCAB Jul. 12, 2012).

for this crush injury, but has yet to be provided psychological assistance for this accident and its resulting problems.

This Board Member finds claimant has suffered psychological injury resulting from the July 29, 2013, accident at respondent and psychological counseling and treatment are in order as the result.

K.S.A. 2013 Supp. 44-534a(a)(2) states:

(2) Such preliminary hearing shall be summary in nature and shall be held by an administrative law judge in any county designated by the administrative law judge, and the administrative law judge shall exercise such powers as are provided for the conduct of full hearings on claims under the workers compensation act. Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim, except that if the employee's entitlement to medical compensation or temporary total disability compensation is disputed or there is a dispute as to the compensability of the claim, no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues. A finding with regard to a disputed issue of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. If an appeal from a preliminary order is perfected under this section, such appeal shall not stay the payment of medical compensation and temporary total disability compensation from the date of the preliminary award. If temporary total compensation is awarded, such compensation may be ordered paid from the date of filing the application, except that if the administrative law judge finds from the evidence presented that there were one or more periods of temporary total disability prior to such filing date, temporary total compensation may be ordered paid for all periods of temporary total disability prior to such date of filing. The decision in such preliminary hearing shall be rendered within five days of the conclusion of such hearing. Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

Respondent disputes the ALJ's decision to appoint Dr. James Eyman as the authorized psychologist to treat claimant for the trauma and PTSD from the accident only. While the Board has the jurisdiction to determine if psychological trauma stems from a work-related accident, the statute does not grant the Board jurisdiction to review what specific treatment an ALJ may or may not grant at a preliminary hearing. The decision to appoint Dr. Eyman is an issue which is not reviewable at this time by the Board.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>4</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2014 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

### **CONCLUSIONS**

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed with regard to whether claimant suffered psychological trauma and resulting PTSD from the accident on July 29, 2013, while working for respondent. The decision by the ALJ to appoint Dr. Eyman as the authorized treating psychologist is not a decision over which the Board takes jurisdiction on an appeal from a preliminary hearing order.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Rebecca Sanders dated November 9, 2015, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January, 2016.

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HONORABLE GARY M. KORTE  
BOARD MEMBER

c: John J. Bryan, Attorney for Claimant  
janet@ksjustice.com  
JJBRYAN7@aol.com

Frederick J. Greenbaum, Attorney for Respondent and its Insurance Carrier  
mvpkc@mvplaw.com  
fgreenbaum@mvplaw.com  
jpearce@mvplaw.com

Rebecca Sanders, Administrative Law Judge

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<sup>4</sup> K.S.A. 2013 Supp. 44-534a.